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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER  
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**FACEBOOK, INC.’S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
CERTAIN MATERIALS IN SUPPORT OF  
FACEBOOK, INC., GIBSON, DUNN &  
CRUTCHER LLP, AND ORIN SNYDER’S  
SUPPLEMENTAL BRIEF IN  
OPPOSITION TO PLAINTIFFS’ MOTION  
FOR SANCTIONS**

1 Pursuant to Civil Local Rules 7-11 and 79-5, Facebook, Inc. (“Facebook”) hereby submits this  
 2 Administrative Motion to File Under Seal Certain Materials in Support of Facebook, Inc., Gibson,  
 3 Dunn & Crutcher LLP, and Orin Snyder’s Supplemental Brief in Opposition to Plaintiffs’ Motion for  
 4 Sanctions (“Opposition”). For the reasons explained below, there is good cause to seal permanently  
 5 this information and Facebook’s request is narrowly tailored under the circumstances.

## **I. Background**

On August 8, 2022, Plaintiffs filed their Supplemental Brief in Support of Sanctions, and three declarations and fifty-one exhibits in support. Dkts. 984–88. On August 22, 2022, Facebook filed temporarily under seal Facebook, Gibson, Dunn & Crutcher LLP, and Orin Snyder’s Supplemental Brief in Opposition to Plaintiffs’ Motion for Sanctions (the “Supplemental Opposition”), the declaration in support from Rosemarie T. Ring (“Ring Declaration”), the declaration in support from Heather L. Richardson (“Richardson Declaration”), the declaration in support from Austin Schwing (“Schwing Declaration”), and thirty-three exhibits (exhibits 48 through 82) in support. Dkts. 998, 999. Pursuant to the Court’s Order granting Facebook until August 26, 2022 to file its motion to permanently seal these materials, Dkt. 994, Facebook hereby submits its Administrative Motion to File Under Seal to permanently seal limited portions of the Supplemental Opposition, Exhibit 53 attached to the Ring Declaration, the Richardson Declaration, Exhibit 56 attached to the Richardson Declaration, and Exhibits 61, 63, 64, 66, 68–70, 73, and 82 to the Schwing Declaration.

Although attached to Plaintiffs’ Administrative Motion, Facebook is not seeking to seal or redact any portion of the Ring Declaration (Dkt. 998-3), the Schwing Declaration (Dkt. 998-16), and Exs. 48–52, 54–55, 62, 65, 67, 71–72, 74–81 (Dkts. 998-4–8, -10–11, -18, -21, -23, -27–28, -30–37).<sup>1</sup>

## **II. The Good Cause Standard Applies Because the Motion Is Unrelated to the Merits**

Courts seal information in non-dispositive motions so long as there is good cause to do so because public disclosure of the information would cause harm or prejudice, and the request is narrowly tailored. *Doe v. Walmart, Inc.*, 2019 WL 636362, at \*1–2 (N.D. Cal. Feb. 11, 2019). Here, the Supplemental Opposition, Declarations, and Exhibits are related to the discovery record, not the merits

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<sup>1</sup> Exhibits 49 and 50 (Dkts. 998-5 and 998-6) have existing redactions to privileged communications between Gibson Dunn lawyers.

1 of this action, so the good cause standard applies.

2 **III. There Is Good Cause for Facebook's Proposed Redactions and Sealing**

3 Facebook asks the Court to permanently seal the following categories of information:

4 ***(i) Confidential information that the Court previously found good cause to seal.***

5 Facebook asks the Court to seal the same portions of the following documents that the Court  
previously approved:

6 1. Ex. 63 at 3–4 (Dkt. 998-19); Dkt. 961-3 (filed with the same redactions); Dkt. 966 (granting  
motion to seal).

7 ***(ii) Confidential information regarding Facebook's proprietary data systems and data  
storage and processing practices.*** As set forth in the Supplemental Stein Declaration and  
Amended Proposed Order, Facebook asks the Court to seal confidential information regarding  
details about the data systems that house specific data and how Facebook stores, tracks, preserves,  
deletes, and processes data. This information involves key components of Facebook's business  
that set it apart and ahead of its competitors and reveals confidential technical information about  
its data systems and proprietary methods for storing and processing data. Supplemental Stein Decl.  
¶ 8. If this information were publicly disclosed, competitors could use it to improve their own  
methods for managing high volumes of user data or for tracking user data across data systems. *Id.*  
Courts routinely seal commercially sensitive information that “competitors would be able to take  
advantage of” and use unfairly if disclosed. *See, e.g., Asetek Danmark A/S v. CMI USA, Inc.*, 2015  
WL 4511036, at \*2 (N.D. Cal. July 23, 2015). Additionally, hackers and other bad actors could  
use this information to better understand Facebook's data systems and target specific repositories  
of data, potentially harming both Facebook and its users. Supplemental Stein Decl. ¶ 8. The Court  
has previously found good cause to seal this type of information. *See, e.g.,* Dkt. 813 at 0026–29  
(requesting sealing data system names); Dkt. 844 (granting motion to seal).

8 ***(iii) Confidential information regarding Facebook's tool for responding to law-  
enforcement requests for user records.*** As set forth in the Supplemental Stein Declaration and  
Amended Proposed Order, Facebook asks the Court to seal confidential information regarding

1 Facebook's tool for responding to law-enforcement requests for user records, including the name  
 2 of the tool, the types of data it contains, the delta between the data within the tool and DYI, and  
 3 the format in which data from the tool is produced. Public disclosure of details about this tool  
 4 would reveal confidential information regarding Facebook's internal operations that could be used  
 5 by bad actors to attempt to circumvent and evade Facebook's enforcement strategies and current  
 and future lawful governmental criminal investigations. Supplemental Stein Decl. ¶ 9. It also  
 could provide confidential information to competitors about how Facebook tracks and stores data  
 across its systems, to Facebook's competitive disadvantage. *Id.*

***(iv) Confidential and competitively sensitive information regarding Facebook's business programs, strategies, decisions, and partners.*** Facebook asks the Court to seal confidential information, set forth in the Supplemental Stein Declaration and Amended Proposed Order, regarding Facebook's business programs, strategies, decisions, and partners, including confidential technical details of how Facebook develops and uses data to target advertisements to the most relevant users. Courts routinely seal documents which would reveal "confidential and competitively-sensitive information" and "confidential business strategies," as well as other "proprietary" information, that competitors could use to a party's competitive disadvantage. *See, e.g., In re Lidoderm Antitrust Litig.*, 2016 WL 4191612, at \* 26–27 (N.D. Cal. Aug. 9, 2016); *In re Qualcomm Litig.*, 2017 WL 5176922, at \*2 (S.D. Cal. Nov. 8, 2017). Courts also regularly seal information that would identify confidential business relationships or reveal the terms of such relationships. *See, e.g., Obesity Rsch. Inst., LLC v. Fiber Rsch. Int'l, LLC*, 2018 WL 3642177, at \*5 (S.D. Cal. Aug. 1, 2018). For these reasons, this Court has previously sealed similar information. *See, e.g.,* Dkt. 813-1 at 3440 (requesting sealing of the name of a business partner); Dkt. 844 (granting motion to seal); Dkt. 550 at 2–3; Dkt. 550-1 at 1 (requesting sealing of information that would give competitors insight into Facebook's strategy); Dkt. 638 (granting motion to seal); Dkt. 812 at 3–4 (explaining harm to Facebook from public disclosure of the details of Facebook's targeted advertising); Dkt. 844 (granting motion to seal such information). Public disclosure of this information could allow Facebook's competitors to copy its strategies, or use the

1 ideas developed by Facebook at its own expense to Facebook's competitive disadvantage.  
 2 Supplemental Stein Decl. ¶ 10. Public disclosure also could harm Facebook's relationships with  
 3 its business partners by disclosing their identities and confidential negotiations with Facebook. *Id.*  
 4 It also could undercut Facebook's ability to negotiate with these entities' competitors. *Id.* Finally,  
 5 Facebook's ability to serve advertisements to the users who find them most relevant is an essential  
 aspect of its business, and if publicly disclosed, this information could allow Facebook's  
 competitors to improve their service of advertisements and cause Facebook competitive harm. *Id.*

**(v) Confidential information regarding Facebook's privacy and platform policy enforcement practices.** Facebook asks the Court to seal confidential information, set forth in the Supplemental Stein Declaration and Amended Proposed Order, regarding Facebook's privacy and platform enforcement practices. Disclosure of information about Facebook's decision-making process for evaluating apps and developers that may be violating its policies would reveal confidential details of Facebook's internal business operations. Supplemental Stein Decl. ¶ 11. If this information were revealed, bad actors could use it to attempt to circumvent and evade Facebook's enforcement strategies, potentially harming both Facebook and its users. *Id.* The Court has previously sealed similar information for the same reasons. *See, e.g.,* Dkt. 812 (requesting sealing of similar information); Dkt. 844 (granting motion to seal).

**(vi) Confidential information regarding Facebook's ADI documents and references thereto.** Facebook asks the Court to seal confidential information, set forth in the Supplemental Stein Declaration and Amended Proposed Order, regarding ADI documents and references thereto. The Court previously found good cause to seal in full similar ADI materials. *See, e.g.,* Dkt. 804-3 at ECF p. 544-79 (fully sealed investigative report); Dkt. 838 (granting motion to seal). Facebook requests that the Court seal similar ADI documents (and references thereto) for the same reasons, including those reasons articulated in Alexander H. Southwell's declaration evidencing the basis for sealing ADI-related documents. Dkt. 804-2; *see also* Dkt. 804 (explaining rationale for sealing ADI investigative reports and ADI-related information).

1 **IV. The Proposed Redactions Are Narrowly Tailored**

2 Facebook's proposed redactions are narrowly tailored because the redactions are limited to the  
3 narrow and limited categories of confidential and proprietary information set forth above. *See Dunbar*  
4 *v. Google, Inc.*, 2013 WL 12216625, at \*1 (N.D. Cal. Aug. 18, 2013) (granting sealing requests that  
5 were "narrowly tailored to protect . . . proprietary information").

\* \* \*

For these reasons, Facebook respectfully requests that the Court permanently seal the confidential information contained in certain materials in the Opposition and supporting materials.

1 Dated: August 26, 2022

**GIBSON, DUNN & CRUTCHER, LLP**

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